

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JAMES STUDENSKY, CHAPTER 7)
TRUSTEE,)
Plaintiff,)
)
v.)
) 6:21-MC-00028-ADA
PEGGY S. BORGFELD, RYAN H.)
DOWNTON, JEFFREY P.) ADV.PRO.NO.: 20-06062-RBK
MADISON, and KEVIN J.)
OWENS,)
Defendants)

ORAL AND VIDEOTAPED DEPOSITION OF

JAMES SPINDLER

APPEARING REMOTELY FROM

ALASKA

JUNE 7, 2022

ORAL AND VIDEOTAPED DEPOSITION OF JAMES SPINDLER,
produced as a witness at the instance of the DEFENDANTS,
and duly sworn, was taken in the above-styled and
numbered cause on the 7th of June, 2022, from 12:04 p.m.
to 3:45 p.m., via videoconference, before Velma C.
LaChausse, Shorthand Reporter and Notary Public in and
for the State of Texas, reported by machine shorthand,
appearing remotely from Harris County, Texas, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

R E M O T E A P P E A R A N C E S

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- AND -

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ALSO PRESENT:

Mr. Connor Kidd
Ms. D. Lehmann

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1 A. No, not on a -- not from the rental income.

2 Q. Was it profitable from anything else?

3 A. Only from the property appreciation, the price
4 appreciation.

5 Q. From a tax basis, Spindler Holdings lost money
6 each year until the property was sold. Is that correct?

7 A. I believe that is correct. But again, you
8 know, this is something I haven't looked at for at least
9 four years.

10 Q. Was Spindler Holdings a pass-through entity for
11 tax purposes?

12 A. It was, or is.

13 Q. Did you take the losses of Spindler Holdings
14 each year on your tax return?

15 A. Well, they're passive losses, and those are
16 limited. Those are ring-fenced.

17 Q. And so how did you account for them on your tax
18 return?

19 A. Well, I have my taxes done by an accountant,
20 and I have for, I think, the past 15 years. But I
21 believe the passive losses simply accrue until you have
22 gains or until you dispose of the real estate.

23 Q. You are not a tax expert. Right?

24 A. I teach tax.

25 Q. Are you giving any tax opinions -- do you

1 agreement of the company does. And this is just a
2 summary. But this is made in light -- this
3 interpretation is made in light of what corporate
4 practice often is, which is to enable some sort of tax
5 distribution.

6 So this is a common -- a common attribute.
7 So that's part of it.

8 And then further, the interpretation then
9 goes on to discuss the -- the advance or loan nature of
10 tax distributions as against excess cash distributions.

11 So it's describing how those provisions
12 would work together.

13 Q. So someone else might have a different
14 interpretation of the company agreement?

15 A. Someone can always have a different
16 interpretation, I suppose.

17 Q. You're not saying your interpretation is
18 correct as a matter of law?

19 A. No. I'm not purporting to give determinations
20 on ultimate legal questions. But I am trying to give
21 testimony that will be helpful on mixed questions of law
22 and fact as well as industry practice and corporate
23 financial practice.

24 Q. Summary Opinion No. 7. Last sentence you say,
25 "These distributions were significantly in excess of

1 taxes actually incurred by defendants."

2 What does that opinion -- what is that
3 opinion based on?

4 A. You're talking about the -- the statement that
5 the distributions were in excess of the actually
6 incurred taxes?

7 Q. Yes.

8 A. Well, that is based in part on my review of
9 distribution records and tax records. And in part it's
10 based on the expert report of Sal Solomon.

11 Q. The tax records you reviewed, were those
12 company tax records or individual tax records?

13 A. I believe both.

14 Q. Is it possible that an individual can have tax
15 losses in one business that reduce its tax obligation on
16 income from a second business?

17 A. Yes, I believe that's possible.

18 Q. Did you make any attempt to look at tax
19 obligations of any individual defendant in a vacuum
20 isolating the defendants other sources of income or loss
21 other than distributions from Little River?

22 A. Well, I'm not sure I understand your "in a
23 vacuum" statement. But I will say that I did review the
24 tax, the individual tax filings, that included
25 statements both of Little River derived income as well

1 as other -- other income or losses.

2 Q. So in your work with corporate governance, are
3 you familiar with tax distributions?

4 A. I am, yes.

5 Q. Are they generally intended to make the equity
6 holder whole with respect to tax obligations due to
7 income, phantom income, from the entity?

8 A. What do you mean by -- you said "phantom
9 income," I believe?

10 Q. Yeah. So you're familiar with pass-through
11 entities for tax purposes. Right?

12 A. I am.

13 Q. And with this -- with a pass-through entity,
14 each equity holder is taxed on their proportion of the
15 company's net income whether or not they receive any
16 money from the company. Right?

17 A. That is generally true, yes.

18 Q. So -- and that income is presented to each
19 equity holder on a K-1. Right?

20 A. That is a statement that will list those
21 allocations, yes.

22 Q. So if an equity holder received a K-1 that
23 shows that that equity holder's proportion of net income
24 is \$10 million, the equity holder is required to pay
25 individual taxes on that \$10 million. Correct?

1 A. I think you're mischaracterizing what I said.
2 I said that some of the forecasting was based on
3 rudimentary data. I haven't seen the actual accrual
4 model, but I have seen what Mr. Solomon has presented in
5 his report about accruals.

6 Q. All right. And I understand Mr. Solomon's
7 report and opinions, and I'm going to depose him
8 separately. And I am not asking for your opinion about
9 Solomon's opinion.

10 What I am asking is about any testimony you
11 intend to offer separate and apart from Solomon's
12 opinion on the topic of solvency.

13 Do you intend to offer an independent
14 opinion without reliance on Solomon that Little River
15 was insolvent at any time in 2016?

16 A. No. I don't intend to offer an independent
17 solvency opinion, rather as I was saying about warning
18 signs that emerged among management e-mails.

19 Q. And you haven't cited any of those management
20 e-mails in your report, have you?

21 A. I think I cite some of the e-mails, not all of
22 them.

23 Q. If Little River was solvent at the time it made
24 distribution, were those distributions in violation of
25 any law, in your opinion?

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Defendants)

REPORTER'S CERTIFICATION

ORAL AND VIDEOTAPED DEPOSITION OF

JAMES SPINDLER

APPEARING REMOTELY FROM

ALASKA

JUNE 7, 2022

I, Velma C. LaChausse, a Shorthand Reporter
and Notary Public in and for the State of Texas, do
hereby certify that the facts as stated by me in the
caption hereto are true; that the above and foregoing
answers of the witness, JAMES SPINDLER, to the
interrogatories as indicated were made before me by the
said witness after being first duly sworn to testify the
truth, and same were reduced to typewriting under my
direction; that the above and foregoing deposition as

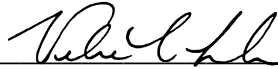
1 set forth in typewriting is a full, true, and correct
2 transcript of the proceedings had at the time of taking
3 of said deposition.

4 I further certify that I am not, in any
5 capacity, a regular employee of the party in whose
6 behalf this deposition is taken, nor in the regular
7 employ of his attorney; and I certify that I am not
8 interested in the cause, nor of kin or counsel to either
9 of the parties;

10 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on
11 this, the 14th day of June, 2022.

12

13



14

Velma C. LaChausse
Notary Public in and for
The State of Texas
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